

***WORKING DRAFT***  
***of***

**Article 12. WATER RIGHT TRANSITION ASSISTANCE PILOT  
PROJECT PROGRAM**

**11-12-1. Definitions.** (a) “Active vested or certified water right” means a vested or currently certified water right that was put to lawful beneficial use in at least six out of the last 10 calendar years, including any water use that occurred before certification.

(b) “Chief engineer” means the chief engineer of the division of water resources, Kansas department of agriculture.

(c) “Commission” means the state conservation commission.

(d) “Consumptive use” means the gross diversions minus the following:

(1) The waste of water, as defined in K.A.R. 5-1-1; and

(2) the return flows to the source of water supply in the following ways:

(A) Through surface water runoff that is not waste; and

(B) by deep percolation.

(e) “Dry land transition plan” means a plan submitted by an applicant describing how permanent vegetation, including warm season grasses and cool season grasses, will be established on land that was previously irrigated, specifically describing the amount and timing of any irrigation that will be necessary to establish this cover. The plan shall not exceed three calendar years.

(f) “Eligible water right” means a water right that meets all of the following criteria:

(1) The water right is an active vested or certified water right that has not been abandoned and is privately owned.

(2) The water right has been certified by the chief engineer as being in an area that is in need of aquifer restoration or stream recovery and is closed to new appropriations of water pursuant to K.S.A. 2-1919 (a) (2) and amendments thereto, except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(3) The state's dismissal of the water right would have a net reduction in consumptive use of the aquifer or stream designated for restoration or recovery pursuant to K.S.A. 2-1919, and amendments thereto.

(4) The point of diversion is located within an eligible area.

(g) "Fair market value" means the value of a water right that is the difference between the price of irrigated cropland and the price of nonirrigated cropland, as observed by the marketplace.

(h) "Local entity" means any political subdivision chartered to address water conservation.

(i) "Partial water right" means a portion of a water right that has been formally divided by the chief engineer based on the agreement of all of the owners of the water right or an order of a court. For a partial water right to be deemed an eligible water right, the partial water right shall be associated with a portion of the distribution system, a

point of diversion, or a type of use that is being physically discontinued. In dividing the water right, the chief engineer shall determine the historic net consumptive use that was associated with each portion of the beneficial use. Conditions shall be placed on the portion of the water right that is not enrolled in the water right transition assistance pilot project program to limit the net consumptive use under that portion of the water right to the historic net consumptive use associated with that physical part of the operation. A partial water right shall not be deemed an eligible water right if there is no physical change in the operation, including discontinuing a point of diversion, discontinuing a type of use, reducing the historic consumptive water use, and reducing the number of irrigated acres.

(j) "Program" means the water right transition assistance pilot project program.

(k) "Water right" means any vested right or appropriation right under which a person may lawfully divert and use water. A water right is a real property right appurtenant to and severable from the land on or in connection with which the water is used. The water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other voluntary disposal, or by inheritance. (Authorized by \_\_\_\_\_; implementing \_\_\_\_\_, as amended by \_\_\_\_\_; effective P-\_\_\_\_\_.)

**11-12-2. Eligible areas.** (a) Each eligible area shall be within the high plains aquifer and shall meet either of the following criteria:

(1) The area meets the following conditions:

(A) Is closed to further appropriations except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program; and

(B) is designated as being in need of aquifer restoration by the chief engineer.

(2) The area meets the following conditions:

(A) Is within a stream reach that the chief engineer has closed to further appropriations except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program; and

(B) is designated as being in need of stream recovery by the chief engineer.

(b) Each eligible area shall also meet the one of the following criteria:

(1) The board of the groundwater management district has designated the area as a priority subunit in its local management plan, and this designation has been approved by the chief engineer.

(2) outside a groundwater management district, the chief engineer has designated the area as a priority subunit. (Authorized by \_\_\_\_\_; implementing \_\_\_\_\_, as amended by \_\_\_\_\_; effective P-\_\_\_\_\_.)

**11-12-3. Application and review.** (a) The application period for the program shall be September 1 through November 15.

(b) Notification of the program shall be published in the Kansas register.

(c) The program procedures and application forms shall be available at the commission office and at conservation district offices.

(d) Each application shall be submitted on a form supplied by the commission.

The application shall include all of the following:

- (1) The name, address, and telephone number of the owner of the water right;
- (2) the water right file number of the water right and the priority date of the water right;
- (3) the location of the point of diversion;
- (4) documentation of the annual water usage, in acre-feet, for the previous 10 years;
- (5) the authorized annual quantity of water associated with the water right;
- (6) the bid price expressed on a per-acre basis, which shall include the number of acres in the water right;
- (7) if the land is going to be planted to permanent cover, a dry land transition plan;
- (8) documentation that verifies historical crop information for the previous 10 years;

(9) documentation of the normal rate of diversion during the normal irrigation season. If the documentation is not based on data from an accurate water flowmeter, the results of a certified well flow rate test conducted no more than six months before the application date by a person or entity approved by the chief engineer and in a manner prescribed by the chief engineer shall be used for this documentation; and

(10) applicable county appraiser's information content sheets for all parcels where the water right being offered for sale authorizes irrigation.

(e)(1) Upon the commission's receipt of each application, it shall be reviewed for completeness by the commission. If the application is not complete, the missing information shall be provided by the applicant to the commission not later than December 1.

(2) After the application is determined to be complete, the application shall be provided by the commission to the chief engineer to determine the eligibility of the water right.

(f) Upon completion of the review by the chief engineer, the following certifications shall be requested by the commission from the chief engineer:

- (1) A statement indicating whether the water right is an eligible water right;
- (2) the average annual historic consumptive water use associated with each water right or portion of a water right for a representative past period, which shall normally be the 10 calendar years before the effective date of these regulations;

(3) the potential impact of dismissing the water right on aquifer restoration or stream recovery; and

(4) any other additional documentation necessary to quantify or qualify the water use reports.

(g) The applications shall be prioritized for payment by the commission based on criteria that include the following:

(1) The timing and extent of the impact of the application on aquifer restoration or stream recovery;

(2) the impact on local water management strategies and priority areas designated by the state; and

(3) the priority date of the water right.

(h) Each applicant shall be notified by the commission of the approval or the disapproval of the program application no later than January 15 of the year following the date on which the application is filed.

(i) Each application meeting the requirements of these regulations may be approved contingent upon funding and the applicant's providing official documentation to the commission that the water right has been dismissed by the chief engineer and its priority has been forfeited.

(j) The negotiations between owners and lessees regarding program participation shall not involve the commission.

(k) No more than 10 percent of a county's irrigated acres shall be eligible for the duration of this program.

(l) There shall be no contribution requirement for a local entity. However, contributions by a local entity may increase the priority of an application.

(m) Each program application that does not meet the requirements of these regulations shall be rejected by the commission. (Authorized by \_\_\_\_\_, implementing \_\_\_\_\_, as amended by \_\_\_\_\_; effective P-\_\_\_\_\_.)



**11-12-4. Payment.** (a) The application approval and payment amounts shall be based on the following:

- (1) the priority date of the water right;
- (2) the calculated quantity of the historic consumptive water use of the water right.
- (3) the impact of the water right's dismissal on aquifer restoration or stream recovery.
- (4) the amount of monetary contributions from a local entity or the applicant, or both; and
- (5) the applicant's bid price;
- (6) the appraised use value and appraised market value as determined by the applicable county appraiser's office and division of property valuation.
- (7) the terms of any request to continue irrigating on a limited basis to establish permanent vegetation.

(b) The maximum amount paid by the commission for a water right authorized for irrigation shall not exceed the fair market value by more than 20 percent of the appraised irrigated land market value as compared to the dryland or grass market value determined from the applicable water ratio tables developed by the applicable county appraiser's office and division of property valuation.

(c) Each water right owner shall sign an irrigation transition assistance grant agreement before payment is made by the commission. Each grant agreement shall include the following provisions:

- (1) The price to be paid by the commission to the water right owner for the dismissal of the subject water right and the terms of payment;
- (2) the date on which the agreement will become effective;
- (3) a provision requiring the water right to be dismissed and its priority forfeited;
- (4) the terms of any conditional approval by the chief engineer to continue irrigation on a limited basis to establish permanent vegetation, for a period not to exceed three years;
- (5) a provision that the approval is conditional on documentation being provided to the commission by the owner of the water right, indicating that the chief engineer has dismissed the water right and ordered its priority forfeited;
- (6) the file number of the water right to be retired;
- (7) if the point of diversion is located within a groundwater management district, a provision that any remaining water user charges assessed by the district before the water right is dismissed will remain the sole responsibility of the owner of the water right; and

(8) a provision requiring that the land to be transitioned to dry land will not be irrigated under any other water right from any water source. The grantee shall agree that each water right that has the land to be transitioned to dry land as an authorized place of use will be divided and the consumptive use for the land to be transitioned to dry land determined by the chief engineer at the request of the commission. The grantee shall agree to dismiss the portion of each water right that was formerly used to irrigate the land transitioned to dry land.

(d) Payment shall be made in equal annual installments, not to exceed 10, or in one lump sum payment. If annual payments are selected, the payments shall be made by March 1 in each year following the year in which the first payment is made. The following factors shall be considered by the commission when determining which payment schedule to use:

- (1) The number of eligible applicants; and
- (2) The amount of program funds for that year.

(e) If a dryland transition plan has been approved, or if there is a standing crop at the time of application approval, payment shall not be made until after the last time that irrigation from the subject water right has permanently ceased. (Authorized by \_\_\_\_\_; implementing \_\_\_\_\_, as amended by \_\_\_\_\_; effective P-\_\_\_\_\_.)

**11-12-5. Transition to dry land.** (a) If land that will no longer be irrigated is to be planted, under this program, to permanent vegetation including warm or cool season grasses, the chief engineer shall be requested by the commission to condition the dismissal of the associated water right to allow limited irrigation of the land for up to three years to establish this cover.

(b) The applicant shall submit a dry land transition plan to the commission if land is to be planted to warm or cool season grasses or other permanent vegetation. A dry land transition plan may be required for dry land cropping. A dry land transition plan may be disapproved by the commission, and modifications to any dry land transition plan may be required by the commission. (Authorized by \_\_\_\_\_; implementing \_\_\_\_\_, as amended by \_\_\_\_\_; effective P-\_\_\_\_\_.)

**11-12-6. Dismissal of water right.** (a) Each water right for which payment is received from the program shall be dismissed by the chief engineer, and the priority of the water right shall have been forfeited.

(b) The chief engineer shall be requested by the commission not to appropriate or reappropriate any additional water in an eligible area if payments have been made for the program in that eligible area, except for the following, if the use, permit, or exemption does not conflict with this program:

- (1) Domestic use;
- (2) temporary permits;
- (3) term permits for five or fewer years; and
- (4) small use exemptions for 15 acre-feet or less.

(c) (1) Each well associated with the water right being dismissed shall be plugged or capped according to Kansas department of health and environment standards or physically retrofitted to domestic use. The appropriate documentation shall be provided to the commission before the applicant receives the first payment. The requirements specified in this paragraph shall be waived if a conditional water right is approved by the chief engineer under a dry land transition plan.

(2) If operating under a dry land transition plan, the grantee shall plug, cap, or physically retrofit the well to domestic use within 60 days of the last time that the ~~crop~~ permanent vegetation is irrigated as approved under a dry land transition plan.

(d) If a partial water right is dismissed on one common well, plugging, capping or physically retrofitting the well to domestic use shall not be required. (Authorized by

\_\_\_\_\_ ; implementing \_\_\_\_\_,

as amended by \_\_\_\_\_ ; effective P-\_\_\_\_\_.)

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**11-12-7. Petition for reconsideration.** (a) Any water right owner may appeal any decision of the commission by filing a petition for reconsideration.

(b) Each petition for reconsideration shall be submitted in writing to the commission within 30 days of the commission's decision and shall state why the commission's decision should be reviewed and why the decision should be modified or reversed.

(c) The petition for reconsideration shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The commission's final decision shall state each reason for this determination.

(d) The decision of the commission shall be final if no petition for reconsideration of that commission decision has been received by the commission after 30 days from the date on which the decision was made. (Authorized by \_\_\_\_\_  
\_\_\_\_\_; implementing \_\_\_\_\_,  
as amended by \_\_\_\_\_; effective P-\_\_\_\_\_.)